



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 3, 1998

Mr. Ruben R. Barrera
Wells Pinckney & McHugh
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3603

OR98-2122

Dear Mr. Barrera:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117685.

The San Antonio Water System (the "system") received two requests for a list of the system's top ten residential water consumers. You indicate that six of the names on the list have been released, but that four of the residential customers have on file requests for confidentiality of information in their customer accounts. You assert that the identity of the four residential customers is protected from disclosure under both common-law and constitutional privacy as protected under section 552.101, and also under section 182.052 of the Utilities Code.¹ You provided this office for review a document that is responsive to the request. It lists the name and address of each residential customer, the average monthly water consumption, and a notation if there is a potential water leak at the customer's address.

Section 182.052 of the Utilities Code provides that personal information in a customer's utility account record may not be disclosed if the requestor requests confidentiality for this information, as provided by the statute. Section 182.051 defines as "an individual's address, telephone number, or social security number." Because you assert that four customers have on file the appropriate forms requesting confidentiality of their personal information, section 182.052 requires the system to maintain as confidential the addresses, telephone numbers, and social security numbers of these four residential customers. Open Records Decision No. 625 (1994). Thus, the responsive list must be redacted to withhold the addresses of these four customers.

You assert that the names of these customers also should be withheld from disclosure. You argue that the purpose of the section 182.052 confidentiality provision will be defeated

¹We note initially that the system also received a request for a list of the top ten water users who have received the most citations or warnings for violations of the City's water conservation regulations. You state that none of the top ten water users have received any warnings or citations from the system and you have so notified the requestor.

if the names of these four customers are released, because "the requestors will easily be able to secure the other personal information which state law seeks to protect." In Open Records Decision No. 625 (1994), this office concluded that only the information specifically required to be withheld in chapter 182 of the Utilities Code is protected from disclosure. Any other customer information may not be withheld from disclosure unless the information is otherwise excepted under the Open Records Act. Open Records Decision No. 625 (1994). The customer names are not protected from disclosure under section 182.052. However, we will address your argument that the four customer names are protected from disclosure under common-law or constitutional privacy as protected by section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is confidential under the federal constitution if it is information regarding the person's right to make certain decisions about matters that the United States Supreme Court has stated are within the "zones of privacy" described in *Roe v. Wade*, 410 U.S. 113 (1973) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" include matters related to marriage, procreation, contraception, family relations, and child-rearing and education. *Paul*, 424 U.S. at 713. Constitutional privacy also encompasses the freedom from being required to disclose certain personal matters to the government. *Ramie v. City of Hedwig Village*, 765 F.2d 490, 495 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986). Such matters would be those "involving the most intimate aspects of human affairs." *Id.* at 494; *see also* Open Records Decision No. 455 at 5 (1987). The test for whether such information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)).

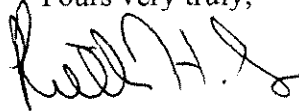
You assert that disclosing customer names along with average water usage discloses highly intimate information, because "the consumption of water by residential customers can be a highly intimate issue. It necessarily encompasses eating, bathing, hygiene and other private habits, the knowledge of which individuals have a legitimate interest in protecting." You also state that there is no legitimate state interest in release of this information, but that release will subject the residents to "public scorn and humiliation merely for being the greatest users of water." Even assuming that some uses of water might involve intimate bodily functions, it still does not appear to this office that revealing a customer's total water usage of thereby identifies or discloses any type of intimate information about that customer. Further, there is a public interest in a government-operated utilities' records concerning customers and their water usage. *See* Gov't Code § 552.002.

Information is protected from disclosure under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*,

430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). You assert that release of the names of these four customers would "result in extreme embarrassment" and possible the ostracism of these customers. You also argue that while the overall consumption of water by the system's customers may be a matter of legitimate public interest, the usage by individual residential customers is not of a matter of legitimate public interest. A residential customer's overall water usage is not intimate and embarrassing, but even if it were there still would be a legitimate public interest in information held by a governmental utility concerning water consumption. The customer names at issue are not protected from disclosure on the basis of either constitutional or common-law privacy. Thus, the responsive list of information must be released, with the addresses of the four customers redacted as required by section 182.052.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 117685

Enclosures: Submitted documents

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